IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 147 & 181 1986

~~T.A. No.~~ XXXXXX

DATE OF DECISION 30/01/1987

B.R.Kumar & Ors.

J.R.Pateria & Ors. Petitioner

Mrs. K A Mehta

Mr. Y N Oza Advocate for the Petitioner(s)

Versus

Government of India & Ors.

~~The Director of Census~~ Operations. Respondent

~~Mr. J D Ajmera~~ Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P H Trivedi : Vice Chairman

The Hon'ble Mr. P M Joshi : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

J U D G M E N T

OA/147/86 & OA/181/86 30/01/1986

Per : Hon'ble Mr P H Trivedi : Vice Chairman

1. These two cases have many common questions of law and facts. Learned advocates Mrs K A Mehta and Mr Y N Oza for the petitioners and Mr J D Ajmera for the respondents in the two cases have substantially common cases except for seniority inter se in OA/147/86.

2. Cases cited 1) SLR 1981(1) Vol.26, 2) AIR 1985 Vol.72 S.C., 3) SLR 1980(3) Vol.25, 4) SLR 1981(2) Vol.27, 5) All India SLJ 1981(1) Vol.1, 6) S.C.Cases 1986 Vol.1, 7) AIR 1980 Vol.67 S.C.

3. The Director of Census Operations contends that Census operations being decennial, he maintain nucleus staff on a regular basis but supplements it for census operations before and after they are undertaken. This supplemental addition of staff involves creation of posts for fixed period, which is extended from time to time and appointments are made to such posts on short term basis. The substance of the petitioners' case is that their appointments initially were not ad-hoc but temporary. They contend that since 1979 the recruitment rules provided for a quota for direct appointment. Such direct appointments are made through a Staff Selection Committee, but due to urgency this condition was exempted from. Selection however was made without taking the recourse to Staff Selection Committee by calling for names from employment exchange and thereafter

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respondents selected the applicants. Their appointments therefore, are not ad-hoc but regular. On the occasion of the various extensions made, the term ad-hoc has been later on added in the orders. As the posts have continued for a number of years they cannot be characterised as fixed term or short term or purely temporary posts to which the appointments may be made ad-hoc. The petitioners claim quasi permanent status under section 3 of Central Government (Temporary Employees) Rules,1965 and claim to be entitled to notice under section 5 thereof even if they are considered temporary employees. They claim that they are exposed to harrasement and risk of summary termination if the respondents area allowed to regard their appointment as purely ad-hoc. They also contend that there is a provision for direct recruitment in the relevant recruitment rules and inspite of there being scope for their being absorbed against regular posts they are kept on only as ad-hoc employees.

4. The respondents have replied that Census Operations being decenial most of the staff is bound to be recruited for short term periods, and appointments thereto have to be made on ad-hoc basis. Exigency of work may requires appointments to be extended but that does not change the character of appointments. Whether the specific term ad-hoc is initially used in the appointment orders or not, the nature of the appointment remains purely ad-hoc. The direct quota was not available prior to 1979 and exemption from recruitment through Staff Selection Committee was resorted to on

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a once for all basis. The direct quota is for posts which are regular and not meant for ad-hoc appointments. Because the posts were urgently required and for fixed short periods exemption from recruitment through Staff Selection Committee was secured. This would show that the purpose was to make ad-hoc appointments and this has been so stated in the appointment orders. The petitioners cannot claim either the notice of one month as temporary employees or quasi permanency status under rule 3 of the Central Government (Temporary Employees) Rules, 1965 because they are neither temporary nor quasi permanent. These rules require not only service for a certain period but declaration about suitability from the appointing authority after considering their conduct and performance.

5. We have to construe the nature of the appointment from the facts and circumstances giving rise to them and not merely from the word ad-hoc used or omitted in the relevant orders. Ad-hoc appointments can be made due to administrative exigency and in addition to regular posts which may be temporary or permanent. The recruitment rules govern appointment of regular posts and the mode of recruitment prescribed thereunder can be departed from when the appointing authority has sanctions for ad-hoc posts and competence for filling then up. Had the posts been filled-up by direct recruitment on a regular basis, the fact that they were to the extent of 25% of the vacancies would need to have been established. When the posts were

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created or to be filled-up the question of regarding them as direct recruitment quota to the extent of 25% of the vacancies has not been shown by the petitioners. It is, therefore, clear that the posts were to be filled-up on a purely ad-hoc basis. The facts and circumstances of these cases are distingushable from those in the cases cited by the learned advocates for the petitioners, in support of their contentions that the petitioners have quasi permanent status or have a right to be appointed as regular employees. There was never any doubt about the appointment being for fixed period in the case of the petitioners, while in the cases cited in one instance promises were held out about regular absorption, and eligibility for regular appointment was recognised and the initial appointments were not ad-hoc. In the case of the petitioners not only the initial appointment is for fixed period and therefore no notice was required for termination and although the term ad-hoc was used at the time of extension the nature of the appointment being purely temporary was never in any doubt. There is no material difference therefore, caused by the letter importing the term ad-hoc in the order of appointment. Regular posts could be temporary but the mode of the recruitment to such temporary posts has to be according to the rules and if the petitioners claim that they were initially appointed as temporary employees under the relevant recruitment rules, their eligibility under the recruitment rules has to be established. They were not recruited through Staff Selection Committee and they were not recruited against the direct quota. Therefore,

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there is no ground for their initial appointment to be construed as temporary. They are, therefore, not entitled to notice of one month under the rules for purpose of termination. They are also not entitled to claim that they may be deemed to be quasi permanent because rule 3 cited requires the appointing authority to be satisfied "having regard to the quality of his work, conduct and character as to his suitability for employment in a quasi permanent capacity under the Government of India, and to make a declaration to that effect." The instructions given on this subject have set out a check list for consideration of cases of quasi permanency and includes 13 points. This is sufficient to show that mere passage of three years or more in continuous temporary services does not entitle the petitioners to be deemed to have earned quasi permanency status.

6. On behalf of the petitioners it was contended that they are entitled to the protection of the Industrial Disputes Act and their services cannot be terminated without subjecting the process of termination to its rules in which the circumstances in which termination can be allowed, compensation to be given and the notice is required are set out. The respondents have persuaded us successfully that the Census Operations are not in the nature of an industry and the petitioners are not workmen as defined in the Industrial Disputes Act and the petitioners' plea on this account must fail.

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7. In OA/147/86 the petitioners have a further cause. The applicants in that case were appointed by orders dated 13/2/1981 and a second batch of persons were selected on 24/3/1981. 9 persons in this batch Sr.Nos. 48 to 53, 55, 57 and 58 were placed above the petitioners who were shown as Sr.No.54, 56, 59 to 68 in the seniority list published on 12/5/1983. The respondents have replied that the Sample Registration Scheme required urgent appointment and for work in the rural areas male candidates were necessary. All the employees against whose seniority the petition have made a claim were not only selected together with the petitioners but were placed above them in the selection lists. But such employees being females they were not considered suitable for work in the rural areas and therefore petitioners were given appointment orders earlier but the seniority of these employees been not effected by such earlier orders of appointments which were given due to administrative exigency. The order or seniority is not governed by the date of joining according to the respondents. We hold that the selection for ad-hoc appointments does not confer ~~relevant~~ seniority which strictly speaking is relevant only regarding regular appointments. The limited relevence in ad-hoc appointments regarding inter se seniority arises regarding the order in which termination can be effected, if some of the posts are not found necessary to be continued. It is well recognised that even among purely temporary employees. 'Last come first go' is a proper principle on considerations of equity, When ad-hoc employees are doing the same kind of work and if such work is not

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continued at any stage and results in terminating of appointments,'last come first go' principle cannot be ignored. In that context petitioners have a case, if the petitioners and the employees against whose seniority they have applied for relief were selected together and due to administrative exigency appointments were given to the petitioners earlier, it would not be just to terminate the services of the petitioners until respondents who were given appointment orders later due to administrative exigency are retained.

8. Before parting from the case, we must observe that there is scope for increasing the strength of regular posts in the category of computors. The respondents have no doubt stated that this has been done from time to time. We consider that if employees who have gathered experience are having the face the prospect of termination of their services after several years of useful service and the door to regular absorption is closed upon them it would not only cause frustration but it can be regarded as wasteful and the situation would call for some remedy in public interest. Since 1979, the rules governing recruitment have been amended and provide for 25% direct recruitment for which the eligibility is a University degree with Mathamatics, Ecoomics or Statastics as a subject of graduation and the desirable qualification is a Computor Certificate or atleast one year's experience in computerisation of statastical data and handling of calculating machines. The posts of Computer has been categorised as non-technical posts and recruitment has to be done through Staff Selection Committee. There is

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no reason why the ad-hoc appointees who satisfy the requirement of eligibility cannot be given some chance for recruitment through the Staff Selection Committee. If age bar stands in the way or if there is any other procedurial constraint there can be sufficient justification to invoke the Rule 7 in the recruitment rules which enables the Government to relax the provisions of the rules. The authorities should sympathetically examine this aspect of the matter and provide the opportunity for regular absorption through direct recruitment quota to those who are eligible for amongst the ad-hoc appointees.

9. We, therefore, find that the nature of the appointment of the petitioners is ad-hoc and it is terminable without notice. The petitioners have not established their claim for temporary or quasi permanency status and are not accordingly eligible for notice under Central Government (Temporary Employees) Rules, 1965 or its benefits. The petitioners are not governed by the Industrial Disputes Act and are not eligible to its benefits as workmen as defined therein. We find merit in the claim of the petitioners shown in OA/147/86 regard to the seniority list published on 12/05/1983 at Annexure-'C' and its enclosures to be extent of their being bracketed with respondents shown at Sr.No.48 to 53, 55, 57, and 58 in the same seniority list for the purpose of the order in which termination can be effected and direct that they may be so dealt with. We also observe

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that the respondents-Government should take urgent steps for giving opportunity to the petitioners who satisfy the recruitment critaria for direct appointment and if necessary consider invoking the powers to relax rules so that such eligible ad-hoc employees get a fair chance for regular absorption. There is scope for further increasing the posts of computors as it is the common experience that ad-hoc employment has to be resorted to and extended year after year because regular posts are not created and filled-up.

10. With these directions and observations we find that the petition in OA/181/86 has no merit and is rejected. We find that petition in OA/147/86 is partly allowed.

(P H TRIVEDI)
VICE CHAIRMAN

O.A./147/86

with

O.A./181/86

CORAM : HON'BLE MR P H TRIVEDI :: VICE CHAIRMAN
HON'BLE MR P M JOSHI :: JUDICIAL MEMBER

2/2/1987

Applicants request for the status quo be allowed to be continued until they appeal to the Supreme Court. Allowed. Status quo to continue for the period of one month pending their filing appeal in the proper forum. With these observations M.A./205/86 stands disposed of.

(P H TRIVEDI)
VICE CHAIRMAN

(P M JOSHI)
JUDICIAL MEMBER